JOHN F. DAVIS,

IN THE

Supreme Court of the United States

October Term, 1967.

No. 61.

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

SUNRAY DX OIL COMPANY, et al.,
Respondents.

No. 97.

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

SUNRAY DX OIL COMPANY,
Respondent.

REPLY BRIEF FOR PETITIONER, THE UNITED GAS IMPROVEMENT COMPANY.

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REPLY BRIEF OF THE UNITED GAS IMPROVEMENT COMPANY.

ARGUMENT.

When the joint brief filed herein by producer-respondents and the brief of the *amicus curiae* are read in the light of this Court's decision in *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U. S. 223, the self-refuting nature of their arguments against the power and duty of the Commission to order refunds becomes apparent. Both briefs claim for the *temporary* certificates at issue, which were issued *ex parte* to meet conditions claimed by the producers to constitute emergencies for them, a permanency and immutability which *permanent* certificates issued after full hearing but corrected under Section 19 of the Act do not have. Any such conclusion would create a "locked-in" period of interstate gas sales wholly free from effective Commission regulation as to price. Such an exemption from regulation would be directly contrary to the intent of Congress in passing the Natural Gas Act to provide the consumer with complete regulatory protection from the moment gas first enters the interstate stream. *Atlantic Ref. Co. v. Public Service Comm'n*, 360 U. S. 378, 389; *Atlantic Ref. Co. v. FPC*, 316 F. 2d 677, 679 (D. C. Cir. 1963) ("But the public must be protected from the time the gas first enters interstate commerce").

When the Commission permits gas to enter interstate commerce on an unregulated basis, any price not consistent with the public convenience and necessity must be subject to full correction at the time effective regulatory action first takes place. *United Gas Improvement Co. v. Callery Properties, Inc., supra.* Both producer briefs attack this proposition as "retroactive rate making" and a violation of so-called "filed rate" or "declared law" doctrines. However, the crucial substantive distinction between cases like

Callery and the present one and cases like *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246,* is that there is no rate which has assumed finality in the first line of cases, a fact ignored here by the producers. By the terms of Section 7 of the Act, the temporary certificates received by producer-respondents were issued "pending the determination of an application for a certificate" and obviously were never granted the exemption authorized by the section in some cases. Since these temporary rates were permitted on an *ex parte* basis and had no finality, the filed-rate doctrine has no applicability. See *Continental Oil Co. v. FPC*, 378 F. 2d 510, 529-32 (5th Cir. 1967), *cert. pending* Nos. 526 *et al.*, O. T. 1967; *Public Service Comm'n v. FPC*, 329 F. 2d 242 (D. C. Cir. 1964), *cert. denied sub nom. Prado Oil & Gas Co. v. FPC*, 377 U. S. 963; *Pan American Petroleum Corp. v. Kansas—Nebraska Natural Gas Co.*, 297 F. 2d 561 (8th Cir. 1962), *cert. denied*, 370 U. S. 937.

Despite this vital fact, all the producer arguments are directed to convincing this Court that rates collected under *ex parte* emergency temporary certificates should be accorded a finality equal to that of rates set after full public hearings under Sections 7, 4 or 5 of the Act and no longer subject to correction under Section 19 of the Act. Such an argument is self-refuting.

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* See also *T.I.M.E., Inc. v. United States*, 359 U. S. 464, and *FPC v. Hope Natural Gas Co.*, 320 U. S. 591.

CONCLUSION.

For the foregoing reasons, Petitioner requests the Court to grant the relief described in detail in the Conclusion of its initial brief.

Respectfully submitted,

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